BUDDLE FINDLAY

Insolvency law reform – Voidable transactions and other matters

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The Ministry of Business, Innovation and Employment has published a Cabinet Paper outlining proposed reforms to New Zealand's insolvency laws to take account of certain recommendations made in the second report of the Insolvency Working Group from May 2017.

While media reports have focused on the decision not to introduce reforms to provide for better protection and recoveries for investors in Ponzi schemes, the Cabinet Paper identifies other reforms taken from the recommendations of the Insolvency Working Group which will be of interest to insolvency practitioners and creditors (both secured and unsecured):

- **Voidable Transactions**: In relation to liquidations, the pre-liquidation 'relation back' period within which insolvent transactions or voidable security may be challenged by a liquidator is proposed to be:
  - shortened from 2 years to 6 months, where the relevant creditor is not a related party of the company in liquidation
  - increased from 2 years to 4 years, where the creditor is a related party

The relation back period for transactions at an undervalue will remain a 2 year period (extended to 4 years for creditors that are related parties), and for transactions for inadequate or excessive consideration will increase from 3 to 4 years.

- **Relation back period following administration**: Where the creditors of a company in administration decide to appoint a liquidator at the watershed meeting, the relation back period will be calculated by reference to the commencement of the administration (rather than the date of appointment of the liquidator at the watershed meeting)
- **Defence for secured creditors**: Secured creditors will have a defence to a voidable transaction claim where the creditor can demonstrate that there was no preference at the time they received payment (as opposed to what the creditor would have received in the actual liquidation)
- **Reckless Trading Claims**: The benefits of any recoveries by liquidators from directors in respect of reckless trading claims are proposed to be payable to unsecured creditors, rather than creditors having security over those claims
- **Preferential Claims**: Employee claims for long service leave, and payment in lieu of notice, are to rank as preferential claims in liquidation
- **Gift cards and vouchers**: Where companies that have issued gift cards or vouchers continue to trade in receivership or liquidation, there will be a requirement on insolvency practitioners to honour at least 50% of the value of each card or voucher presented.

Draft legislation implementing the above reforms, and other technical amendments included in the Cabinet Paper, is expected to be introduced next year.

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